

BEFORE THE FEDERAL ELECTION COMMISSION

2008 JUN 13 P 3 38

In the Matter of

Freedom's Watch, Inc

MUR 6002

**RESPONSE OF FREEDOM'S WATCH, INC. TO THE COMPLAINT FILED BY
THE DEMOCRATIC CONGRESSIONAL CAMPAIGN COMMITTEE**

I INTRODUCTION

This responds to the notification by the Federal Election Commission ("Commission") of a complaint filed against Freedom's Watch, Inc ("FW") by the Democratic Congressional Campaign Committee ("DCCC") in the above referenced matter. For the reasons set forth below, the complaint is without merit and the Commission should find no reason to believe that FW violated the Federal Election Campaign Act of 1971, as amended (the "Act"), or Commission regulations, dismiss the matter, and take no further action.

FW specifically and generally denies each allegation made in the DCCC's complaint. The Office of General Counsel must apply a fair and objective review of FW's advertisement, applying the standards established by the federal courts – and especially the United States Supreme Court in FEC v Wisconsin Right to Life, Inc., 127 S. Ct. 2652 (2007) ("WRIL") – and Commission regulations. See 11 C.F.R. § 114.15(d) (limiting information that the Commission may consider in evaluating a communication). If properly applied, this process will result in findings that

- FW's advertisement constitutes a permissible electioneering communication under WRIL and Commission regulations, and
- FW timely reported all information required of nonprofit entities sponsoring a permissible electioneering communication.

Accordingly, the DCCC's complaint is without merit and the Commission should dismiss the matter and take no further action.

A FW's advertisement

FW began airing an advertisement entitled "Family Tax" which discusses the issue of taxes and their impact on Louisiana families on April 15, 2008. The advertisement discusses the public policy positions and voting record of Don Cazayoux, at the time a Member of the Louisiana House of Representatives. The advertisement includes a call to action that asks viewers to call Mr. Cazayoux and tell him to oppose tax hikes that, upon information and belief, were soon to be an issue before the Louisiana legislature. The advertisement does not mention an election, refer to Mr. Cazayoux as a candidate, refer to a political party, solicit campaign contributions, refer to the act of voting, or discuss any personal characteristic or activities of Mr. Cazayoux. A copy of the script is attached to this response as Exhibit A.

II THE FREEDOM'S WATCH ADVERTISEMENT IS A PERMISSIBLE ELECTIONEERING COMMUNICATION.

In WRTL, the United States Supreme Court upheld an as applied challenge to the ban on the use of corporate funds to finance electioneering communications. 127 S. Ct. at 2652. The Court held that only communications that are the functional equivalent of express advocacy are subject to the ban on corporate funds financing electioneering communications. Id. at 2670 & 2673. A communication is the functional equivalent of express advocacy only if it "is susceptible of no reasonable interpretation other than an appeal to vote for or against a specific candidate." Id. at 2667. On the other hand, a genuine issue ad, which is not subject to the electioneering communication rules, lacks indicia of express advocacy because it does not mention an election, candidacy, political party or challenger, and the communication does not take a position on a candidate's character, qualifications or fitness for office. Id.

In the wake of this decision, the Commission promulgated an exemption from the corporate funding prohibitions set forth in 11 C.F.R. § 114.2. Advertisements qualifying for the exemption may be funded with corporate funds. See 11 C.F.R. § 114.15, 72 Fed. Reg. 72903.

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A FW's advertisement satisfies the Commission's safe harbor provision for permissible electioneering communications under 11 C.F.R. § 114.15.

The Commission adopted a safe harbor provision with three prongs to determine whether a communication qualifies as a permissible electioneering communication. Corporations, including nonprofit corporations such as FW, are permitted to make electioneering communications to the general public unless the communication is susceptible of no reasonable interpretation other than as an appeal to vote for or against a clearly identified federal candidate. 11 C.F.R. 114.15(a). A communication is permissible if it qualifies for the safe harbor by

- (1) Not mentioning any election, candidacy, political party, opposing candidate, or voting by the general public,
- (2) Not taking a position on the candidate's character, qualifications or fitness for office, and
- (3) Focusing either on a legislative, executive or judicial matter or issue, and urging a candidate to take a particular position or action with respect to the matter or issue, or urging the public to adopt a particular position and to contact the candidate with respect to the matter or issue.

11 C.F.R. 114.15 (b). A communication that satisfies the safe harbor provision demonstrates that it is susceptible of a reasonable interpretation other than as an appeal to vote for or against a federal candidate. Such communications are not the functional equivalent of express advocacy and may be paid for with corporate funds.

In the instant case, FW's advertisement satisfies the safe harbor exemption. A fair and objective review of the communication confirms that it does not mention an election, candidacy, political party, opposing candidate, or voting by the general public. The communication does not contain any direct mention of the topics listed above, or any indirect references to such topics. See 72 Fed. Reg. 72903. For example, the advertisement does not mention the date of the election, make any general references to voting such as "Remember to vote to lower your taxes," reference

the candidate's office or candidacy such as "Bob Jones is running for Senate," reference political parties, make comparative references to the candidate's opponent, or implied references to incumbents such as "it's time to take out the trash, select real change with Bob Smith." See *id*. Accordingly, the FW communication satisfies the first prong of the safe harbor provision.

FW's communication satisfies the second prong of the safe harbor provision because it does not take a position on the candidate's character, qualifications or fitness for office. Rather, FW's communication discusses the issue of taxes and Don Cazayoux's record of supporting higher taxes on goods such as groceries and services such as utilities in his then-role as a Member of the Louisiana House. In the Explanation and Justification to the permissible electioneering rule, the Commission stated:

The Commission agrees with the many commenters who argued that a reference to the past voting record of the officeholder or candidate on a particular issue does not by itself constitute taking a position on a candidate's or officeholder's character, qualifications, or fitness for office.

Id. Here, under the Commission's justification of its own rule, the discussion of Mr. Cazayoux's public policy record of supporting higher taxes does not constitute taking a position on his character, qualifications or fitness for office.

Finally, FW's advertisement satisfies the third prong of the safe harbor provision because it focuses either on a current legislative issue and urges Mr. Cazayoux to take a particular position or action with respect to that issue. He was a sitting Member of the Louisiana House at the time and taxes were scheduled to be on its agenda. The advertisement contains a clear, non-electoral call-to-action that urges the viewers to "Tell Don Cazayoux to oppose tax hikes." The video portion of the advertisement states "Call Don Cazayoux at 225-638-8725 and tell him to oppose tax hikes." The phone number listed is the legislative office number for then-Rep. Don Cazayoux. The

Commission's Explanation and Justification shows that even if Mr. Cazayoux had not been a sitting elected official at the time, the ad would still be considered permissible.

Finally, the Commission agrees with those commenters who pointed out that issue advocacy groups may urge a candidate who is not a sitting officeholder to take a certain position on a legislative, executive or judicial issue, not because they want to advocate the candidate's election or defeat, but because they want the candidate to commit to taking action on a certain issue if the candidate is elected. Therefore, unlike the rule proposed in the NPRM, the final rule includes not only references to sitting officeholders but also references to any federal candidate. However, in order to qualify for the safe harbor, the EC must either urge the candidates themselves to take a position, or urge the public to take a position and contact the candidate.

Id. at 72904. FW's advertisement satisfies the third prong of the safe harbor provision by urging the public to contact Mr. Cazayoux to urge him to "oppose tax hikes" in the audio and visual portions of the advertisement since he is a self-described "leader" of the Louisiana House.¹ Accordingly, FW's advertisement satisfies all three prongs of the safe harbor provision and constitutes a permissible electioneering communication under 11 C.F.R. § 114.15(b).²

B. Even if it did not satisfy the safe harbor provision, FW's advertisement constitutes a permissible electioneering communication under 11 C.F.R. § 114.15(c).

Under 11 C.F.R. § 114.15(c), if a communication does not qualify for the safe harbor provision, it may still qualify as a permissible electioneering communication. The Commission considers two factors under the balancing test: (1) whether the communication contains any indicia of express advocacy, and (2) whether the communication has content that would support a determination that it has an interpretation other than as an appeal to vote for or against a clearly identified candidate. Id. If, on balance, the communication has an interpretation other than as an appeal to vote for or against a federal candidate, the communication constitutes a permissible

¹ CITE TO BIO ON HIS WEBSITE

² The DCCC's complaint, which fails to cite any exact language, mischaracterizes FW's advertisement as one that "expressly advocates the defeat of congressional candidate Don Cazayoux." Complaint at 1. As explained above, FW's advertisement satisfies the safe harbor provision for permissible electioneering communications. It does not contain express advocacy under even the most strained interpretation of the regulatory definition of express advocacy under sections 100.22(a) or 100.22(b). FW's advertisement contains a clear non-electoral call to action that urges the viewer to contact Mr. Cazayoux at his Louisiana House telephone number and urge him to oppose higher taxes. Therefore, FW's advertisement does not constitute express advocacy even under the expanded, previously held unconstitutional, definition of express advocacy under 11 C.F.R. § 100.22(b).

electioneering communication *Id.* Any doubt regarding the permissibility of the communication must be resolved in favor of permitting the communication *See id.* § 114.15(c)(3) The only evidence the Commission may consider in conducting the balancing test is the content of the communication and limited background information such as whether the individual named in the communication is a federal candidate or whether the advertisement describes a public policy issue *Id.* § 114.15(d)

As discussed above, FW's advertisement does not contain any indicia of express advocacy. The advertisement does not mention any election, candidacy, political party, opposing candidate, or voting by the general public *Id.* § 114.15(c)(1)(i). It also does not take a position on Mr. Carayoux's character, qualifications or fitness for office *Id.* § 114.15(c)(1)(ii). Rather, FW's advertisement focuses on the issue of taxes then before the Louisiana legislature in which he was serving and urges the public to contact Mr. Carayoux about opposing tax hikes *See id.* 114.15(c)(2)(i). The advertisement includes a clear call-to-action urging the public to contact him about opposing higher taxes *Id.* 114.15(c)(2)(iii). Accordingly, on balance, FW's advertisement constitutes a permissible electioneering communication because it has an interpretation other than as an appeal to vote for or against a clearly identified federal candidate.

III. FW PROPERLY REPORTED IN A TIMELY MANNER THE REQUIRED INFORMATION FOR PERMISSIBLE ELECTIONEERING COMMUNICATIONS BY NONPROFIT ENTITIES.

On April 16, 2008, FW filed FEC Form 9, 24 Hour Notice of Disbursements/Obligations for Electioneering Communications, with the Commission as required by 11 C.F.R. §§ 114.15(f) and 104.20.³ *See* Exhibit B. FW's report lists the identifying information for the organization, the persons sharing or exercising control, and the required itemization of disbursements and obligations.

³ As a preliminary matter, FW reserves the right to challenge the constitutionality of the Commission's reporting requirement for permissible electioneering communications (11 C.F.R. § 114.15(f) & 104.20) based on the Supreme Court's *WRTL* decision.

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information 11 C F R § 104 20(c), Exhibit B The form was timely filed within 24 hours of the public distribution on April 15, 2008

Pursuant to the Commission regulations, FW was not required to list donors to the organization Commission regulations require the disclosure of donors on FEC Form 9 only in circumstances where the donors make donations for the specific purpose of funding electioneering communications 11 C F R § 104 20(c)(9)

Thus, new section 104 20(c)(9) does not require corporations and labor organizations making electioneering communications permissible under 11 C F R 114 15 to report the identities of everyone who provides them with funds for any reason Instead, new section 104 20(c)(9) requires a labor organization or a corporation to disclose the identities only of those persons who made a donation aggregating \$1,000 or more specifically for the purpose of furthering ECs pursuant to 11 C F R § 114 15 during the reporting period

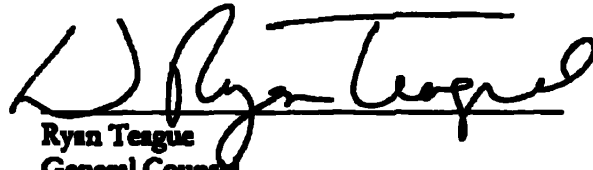
72 Fed Reg 72911 Accordingly, only donations made for the specific purpose of furthering electioneering communications are required to be disclosed on FEC Form 9 FW did not solicit any donations for the purpose of airing an electioneering communication in Louisiana or elsewhere All funds contributed to FW during 2008 have been for general purposes its general purpose is to engage in activities that further FW's core issue agenda The actual funds expended for producing and airing "Family Tax" were disclosed on the FW April 16, 2008 FEC Form 9 Therefore, this allegation is without merit

IV. CONCLUSION

For all of the foregoing reasons, the DCCC complaint is without merit and the Commission must dismiss this matter and take no further action FW's advertisement satisfies the safe harbor provisions of 11 C F R 114 15 and constitutes a permissible electioneering communication that may be paid for with corporate funds Similarly, the advertisement also qualifies as a permissible electioneering communication under the balancing test set forth in 11 C F R § 114 15(c) Finally, FW satisfied its reporting obligations by filing a complete FEC Form 9 containing all of the required information for nonprofits sponsoring permissible electioneering communications

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Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ryan Teague", written over a horizontal line.

Ryan Teague
General Counsel
Freedom's Watch, Inc

June 12, 2008

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EXHIBIT A

Freedom's Watch - LA-08
:30 TV
"FAMILY TAX"
April 13, 2008

VIDEO	AUDIO
<p>Shot of gas pumps Super "Local gas price hits another all-time high" <i>Source The Times-Picayune 4/8/08</i></p> <p>Cut to Picture of Don Cazayoux</p> <p>Super "Voted to Raise Taxes"</p> <p>Super "Cazayoux voted for higher income taxes" <i>Source Sunday Advocate, 6/16/02</i></p> <p>Source 1: Roll Call Votes #69, #136, #174, 2002 Source 2: "How legislators voted on selected issues," <i>Sunday Advocate</i> [Baton Rouge], 6/16/02 Source 3: Roll Call Vote HB 299, Roll Call #204, Conference Report Passed 71-33, 6/7/00, Cazayoux voted Yea Source 4: "Here's how legislators voted on tax proposals," <i>The Advocate</i> [Baton Rouge], 6/9/00</p> <p>Super "Higher taxes on utility bills" <i>Source Sunday Advocate, 6/11/00</i></p> <p>Source 5: Roll Call Vote HB 140, Roll Call #219, Conference Report Passed 70-32, 6/7/00, Cazayoux voted Yea Source 6: "How legislators voted on select issues," <i>Sunday Advocate</i> [Baton Rouge], 6/11/00</p> <p>Super "Higher taxes on groceries" <i>Source Sunday Advocate, 6/11/00</i></p> <p>Source 5: Roll Call Vote HB 140, Roll Call #219, Conference Report Passed 70-32, 6/7/00, Cazayoux voted Yea Source 6: "How legislators voted on select issues," <i>Sunday Advocate</i> [Baton Rouge], 6/11/00</p> <p>Super "Eliminate Child Tax Credit" <i>Source: Sunday Advocate, 6/11/00</i></p> <p>Source 7: Roll Call Vote HB 299, Roll Call #204, Conference Report Passed 71-33, 6/7/00, Cazayoux voted Yea Source 8: "How legislators voted on select issues," <i>Sunday Advocate</i> [Baton Rouge], 6/11/00 Source 9: Guy Coates, "Lawmakers in denial," <i>Associated Press</i>, 6/12/00</p>	<p>Family budgets are tight</p> <p>And what's Don Cazayoux done to help?</p> <p>He voted to raise taxes</p> <p>Cazayoux voted for Higher income taxes (Sources #1, #2, #3 #4)</p> <p>Higher taxes on utility bills (Sources #5, #6)</p> <p>Higher taxes on groceries. (Sources #5, #6)</p> <p>He even wanted to eliminate Louisiana's child tax credit (Sources #7, #8, #9)</p>
<p>Super "That's like raising taxes on our kids"</p>	<p>That's like raising taxes on our kids</p>

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Super "Higher taxes on our kids and the cereal they eat"

Super "Cazayoux's votes have cost you too much"

Super "Tell Don Cazayoux to stop taxing you Call 225-638-8726"

**Paid for by Freedom's Watch
and not authorized by any candidate or candidate's committee
www.freedomwatch.org**

Higher taxes on our kids, and the cereal they eat

Cazayoux's votes have cost you too much

Tell Don Cazayoux to oppose tax hikes

**Freedom's Watch is responsible for the content of this
ad**

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EXHIBIT B

FEC FORM 9

24 HOUR NOTICE OF DISBURSEMENTS/OBLIGATIONS FOR
ELECTIONEERING COMMUNICATIONS

1 Person Making the Disbursements/Obligations

(a) Name

Freedom's Watch Inc

(b) Address (number and street) ☐ check if different than previously reported

401 9th St NW

2. FEC Identification Number

C

(c) City, State and ZIP Code

Washington, DC 20004

(d) Name of Employer or Principal Place of Business

(e) Occupation

3 In This Statement	X New or Amended	4. Covering Period	04	14	' 2008
			04	15	2008
5 (a) Date of Public Distribution(s)		04	15	2008	(b) Communication Title
					Family Taxes

6 The filer is a(n): (a) Individual (b) Unincorporated Organization (c) Qualified Nonprofit Corporation (11 CFR 114.10)
 (a) ☒ Corporation, Labor Organization or Qualified Nonprofit Corporation making communications under 11 CFR 114.15
 (d) Other, specify _____

7 If the filer is an individual, unincorporated organization or qualified nonprofit corporation, were the disbursements made exclusively from donations to a segregated bank account? Yes No ☒

8 Custodian of Records

(a) Name

Douglas W Robinson

(b) Address (number and street)

401 9th St. NW

(c) City, State and ZIP Code

Washington, DC 20004

(d) Name of Employer or Principal Place of Business

(e) Occupation

Freedom's Watch, Inc

Chief Financial Officer

9 Total Donations This Statement . . . 0.00

10 Total Disbursements/Obligations This Statement , 125,966 80

Under penalty of perjury, I certify that this statement is true, correct and complete

TYPE OR PRINT NAME OF PERSON COMPLETING FORM

Douglas W. Robinson

SIGNATURE

DW Robinson

DATE 04/16/2008

NOTE: Submission of false, incorrect or incomplete information may subject the person signing this statement to the penalties of 18 USC § 1001.

FEC FORM 9 (REV. 1/2007)

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11 Person(s) Sharing/Exercising Control

A	(a) Name Mel Sembler
	(b) Address (number and street) 5858 Central Avenue
	(c) City, State and ZIP Code St Petersburg, FL, 33707-1728
	(d) Name of Employer or Principal Place of Business The Sembler Company
	(e) Occupation Chairman
B	(a) Name Matthew Brooks
	(b) Address (number and street) 50 F Street NW Suite 100
	(c) City, State and ZIP Code Washington, DC 20001
	(d) Name of Employer or Principal Place of Business Republican Jewish Coalition
	(e) Occupation Executive Director
C	(a) Name Ari Fleischer
	(b) Address (number and street) 624 Old Post Road
	(c) City, State and ZIP Code Bedford, NY 10506
	(d) Name of Employer or Principal Place of Business Fleischer Communications
	(e) Occupation President
D	(a) Name William Weidner
	(b) Address (number and street) 3355 Las Vegas Blvd South
	(c) City, State and ZIP Code Las Vegas, NV 89109
	(d) Name of Employer or Principal Place of Business Las Vegas Sands Corporation
	(e) Occupation President
E	(a) Name Carl Forti
	(b) Address (number and street) 401 9th St NW
	(c) City, State and ZIP Code Washington, DC 20004
	(d) Name of Employer or Principal Place of Business Freedom's Watch Inc.
	(e) Occupation Executive Vice President

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SCHEDULE B-A
Donation(s) Received

PAGE 3 OF 4

A Full Name of Donor <hr/> Mailing Address of Donor <hr/> City <hr/> State <hr/> Zip <hr/>	Date of Receipt <hr/> Amount <hr/>
B Full Name of Donor <hr/> Mailing Address of Donor <hr/> City <hr/> State <hr/> Zip <hr/>	Date of Receipt <hr/> Amount <hr/>
C Full Name of Donor <hr/> Mailing Address of Donor <hr/> City <hr/> State <hr/> Zip <hr/>	Date of Receipt <hr/> Amount <hr/>
D Full Name of Donor <hr/> Mailing Address of Donor <hr/> City <hr/> State <hr/> Zip <hr/>	Date of Receipt <hr/> Amount <hr/>
E Full Name of Donor <hr/> Mailing Address of Donor <hr/> City <hr/> State <hr/> Zip <hr/>	Date of Receipt <hr/> Amount <hr/>
SUBTOTAL of Donations This Page (optional) <hr/>	<hr/>
TOTAL This Period (last page file line number only) (carry total from last page to Line 14) <hr/>	<hr/>

SCHEDULE B-B

Disbursement(s) Made or Obligation(s)

PAGE 4 OF 4

A. Full Name (Last, First, Middle Initial) of Payee Crossroads Media				Date of Disbursement or Obligation '04 '15 2008	
Mailing Address of Payee 66 Canal Center Plaza, Suite 555				Amount 110,966 80	
City Alexandria		State VA		Zip Code 22314	
Name of Employer Campaign				Commencement Date '04 '15 2008	
Purpose of Disbursement (including title(s) of communication(s)) Media Placement					
Name of Federal Candidate Don Cazayoux		Office Sought <input checked="" type="checkbox"/> House <input type="checkbox"/> Senate <input type="checkbox"/> President		Disbursement/Obligation For <input type="checkbox"/> Primary <input type="checkbox"/> General <input checked="" type="checkbox"/> Other (specify) > SPECIAL Elec	
Name of Federal Candidate _____		Office Sought <input type="checkbox"/> House <input type="checkbox"/> Senate <input type="checkbox"/> President		Disbursement/Obligation For <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) >	
Name of Federal Candidate _____		Office Sought <input type="checkbox"/> House <input type="checkbox"/> Senate <input type="checkbox"/> President		Disbursement/Obligation For <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) >	
B. Full Name (Last, First, Middle Initial) of Payee Upgrade Films				Date of Disbursement or Obligation '04 '14 2008	
Mailing Address of Payee 3299 K St, NW Suite 200				Amount 15,000 00	
City Washington		State DC		Zip Code 20007	
Name of Employer Campaign				Commencement Date '04 '15 2008	
Purpose of Disbursement (including title(s) of communication(s)) Media Production					
Name of Federal Candidate Don Cazayoux		Office Sought <input checked="" type="checkbox"/> House <input type="checkbox"/> Senate <input type="checkbox"/> President		Disbursement/Obligation For <input type="checkbox"/> Primary <input type="checkbox"/> General <input checked="" type="checkbox"/> Other (specify) > SPECIAL Elec	
Name of Federal Candidate _____		Office Sought <input type="checkbox"/> House <input type="checkbox"/> Senate <input type="checkbox"/> President		Disbursement/Obligation For <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) >	
Name of Federal Candidate _____		Office Sought <input type="checkbox"/> House <input type="checkbox"/> Senate <input type="checkbox"/> President		Disbursement/Obligation For <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) >	
SUBTOTAL of Disbursements/Obligations This Page (optional)				125,966 80	
TOTAL This Period (last page the two number only) (carry total from last page to Line 10)				125,966.80	

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